

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	CASE NO. 16CR1408 WQH
Plaintiff,	ORDER
v.	
ROBERT ERIC HOLCOMB,	
Defendant.	

HAYES, Judge:

The matter before the Court is the jurisdiction to proceed after Defendant filed a Notice of Appeal.

On June 16, 2016, a federal grand jury returned an indictment charging Defendant Robert Eric Holcomb with tax evasion, aiding or assisting in the preparation of false returns, making false statements to a financial institution, possession of an unregistered firearm, and wire fraud. (ECF No. 1). Defendant was arrested on July 12, 2016 and arraigned on the indictment.

On January 6, 2017, this Court filed an Order (ECF No. 53) denying the following motions filed by the Defendant: (1) motion to dismiss the indictment (ECF No. 27); (2) motion to dissolve the protective order (ECF No. 40); (3) motion for reconsideration (ECF No. 41); (4) motion for an injunction to suppress evidence (ECF No. 42); (5) motion for injunction to quash all IRS actions (ECF No. 43); and (6) supplemental motion to dismiss (ECF No. 44).

On January 18, 2017, Defendant filed a Notice of Appeal from the January 6, 2017 Order. (ECF No. 56). The Government filed a motion to dismiss the appeal in the

1 Court of Appeals on the grounds that the January 6, 2017 Order is not a final appealable
 2 order and does not fall within the collateral order exception. Defendant filed a
 3 response. The motion to dismiss the appeal remains pending in the Court of Appeals.

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 5 Jury trial is currently scheduled in this district court to begin on Tuesday, June
 6 27, 2017. (ECF No. 65).

7 **RULING OF THE COURT**

8 In *Ruby v. Secretary of U.S. Navy*, 365 F.2d 385, 388-89 (9th Cir. 1966), the
 9 Court of Appeals explained:

10 The only thing that is accomplished by a proper notice of appeal is to
 11 transfer jurisdiction of a case from a district court to a court of appeals. If,
 12 by reason of defects in form or execution, a notice of appeal does not
 transfer jurisdiction to the court of appeals, then such jurisdiction must
 remain in the district court; it cannot float in the air.

13 Where the deficiency in a notice of appeal, by reason of untimeliness, lack
 14 of essential recitals, or reference to a non-appealable order, is clear to the
 15 district court, it may disregard the purported notice of appeal and proceed
 16 with the case, knowing that it has not been deprived of jurisdiction. If the
 17 district court is in doubt as to whether the notice of appeal is inoperative
 by reason of some such defect, it may decline to act further until the
 purported appellee obtains dismissal of the appeal in the court of appeals.
 In the rare instance where the district court proceeds with a case under the
 mistaken belief that a notice of appeal is inoperative, the appellant may
 apply to the court of appeals for a writ of prohibition.

18 In *Van Cauwenberghe v. Baird*, 486 U.S. 517, 521-22 (1988) the Supreme Court
 19 Court stated,

20 The courts of appeals have jurisdiction under 28 U.S.C. § 1291 of appeals
 21 “from all final decisions of the district courts ... except where a direct
 22 review may be had in the Supreme Court.” A party generally may not take
 23 an appeal under § 1291 until there has been a decision by the district court
 that “ends the litigation on the merits and leaves nothing for the court to
 do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 233,
 65 S. Ct. 631, 633, 89 L.Ed. 911 (1945). In *Cohen v. Beneficial Industrial*
 24 *Loan Corp.*, *supra*, however, we recognized a “small class” of decisions
 that are immediately appealable under § 1291 even though the decision has
 25 not terminated the proceedings in the district court. 337 U.S., at 546, 69
 S.Ct. at 1225. The Court stated that a decision is final and appealable for
 26 purposes of § 1291 if it “finally determine[s] claims of right separable
 27 from, and collateral to, rights asserted in the action, too important to be
 denied review and too independent of the cause itself to require that
 appellate consideration be deferred until the whole case is adjudicated.”
 28 *Ibid*. The Court refined the “collateral order” doctrine of *Cohen* in
Coopers & Lybrand v. Livesay, 437 U.S. 463, 98 S. Ct. 2454, 57 L.Ed.2d

1 351 (1978). In *Coopers & Lybrand*, the Court held that to come within the
2 collateral order doctrine of *Cohen*, the order must satisfy each of three
3 conditions: it must (1) “conclusively determine the disputed question,” (2)
4 “resolve an important issue completely separate from the merits of the
5 action,” and (3) “be effectively unreviewable on appeal from a final
6 judgment.” 437 U.S., at 468, 98 S. Ct., at 2458 (footnote omitted).

7 In this case, Defendant has not been convicted or sentenced. There has been no
8 “final decision of the district court” as stated in 28 U.S.C. § 1291. The January 6, 2017
9 Order addressed the claims by Defendant that the district court lacks jurisdiction over
10 him on various grounds. This district court conclusively determined the disputed
11 questions and resolved issues completely separate from the merits of the action in the
12 January 6, 2017 Order. However, it is clear to this district court that all of the issues
13 addressed in the January 6, 2017 Order can be effectively reviewable on appeal from
14 a final judgment. The January 6, 2017 Order does not come within the collateral order
15 doctrine. This Court concludes that the notice of appeal from the January 6, 2017 Order
16 did not transfer jurisdiction to the court of appeals and that jurisdiction remains in this
17 court. The parties shall continue to prepare for trial.

18 DATED: March 28, 2017

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WILLIAM Q. HAYES
United States District Judge